IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1148 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

JAGMOHAN LALMAN AGRAWAL

Appearance:

1. Criminal Appeal No. 1148 of 1992

Mr M A Bukhari, APP for Petitioner No. 1

NOTICE SERVED for Respondents No. 1-2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 18/12/2001

ORAL JUDGEMENT

This is an appeal under section 377 of the Code of Criminal Procedure, 1973 (for short, 'the Code') for enhancement of punishment awarded to the respondents for

an offence punishable under section 3 read with section 7 of the Essential Commodities Act, 1955 (for short 'the Act'). The case was against three accused. In this appeal, only the present respondents are before this Court. The case before the trial court was that though there was provision made in the Textiles (Consumer Protection) Regulations, 1988, that all processors/hand processors shall obtain declaration in Form A at Annexure 'A' of the Notification from owners of goods delivered for processing and shall enter them appropriately in the Register in Form B at Annexure 'B' to the Notification on the day of the receipt of the goods, the present respondent did not comply with the requirement of the said Regulation and committed an offence punishable under section 7 of the said Act. On receipt of the complaint, appropriate action was taken and charge was also framed. After hearing the evidence and arguments of the parties, the learned Special Judge, while dealing with the Special Criminal Case No.60/90, found that the respondents herein were guilty of the charge and after hearing them on the quantum of punishment, the learned Judge found that so far as respondent No.2 is concerned, it cannot be sentenced to imprisonment as it is a company. Therefore, the second respondent was ordered by the learned Special Judge by judgment and order dated 20.9.1992 to pay fine of Rupees One thousand. So far as respondent No.1 is concerned, the learned Special Judge observed that looking to the facts and circumstances of the case, the first respondent should be directed to suffer one day imprisonment till rising of Court and to pay fine of Rs.500/-, in default of payment of fine, the first respondent was further directed to suffer S.I. for 10 days. Feeling aggrieved by the said quantum of punishment imposed on the present respondents, the appellant-State of Gujarat has preferred this appeal before this Court for enhancement of the said punishment. It has mainly been contended before this Court that the punishment awarded is too lenient and, therefore, the learned Special Judge has committed error in selecting the quantum of punishment. That therefore, the present appeal be allowed and the punishment awarded to the respondent be enhanced.

2. On receipt of the appeal, leave was granted and the appeal was admitted. Despite service of notice, none appears on behalf of the respondent. Mr M A Bukhari, learned APP appears on behalf of the appellant-State. I have heard learned APP for the State. Since the respondents have not been represented by any one, there is no question of hearing the respondent. Learned APP has argued the matter at length that the punishment

awarded is too lenient and, therefore, it must be enhanced.

3. On the other hand, it is noticed that the provision which is found to have been flouted by the present respondents is simply a provision requiring the respondents to obtain a declaration in Form 'A' annexed with the notification and another requirement is that the respondents were required to make an entry in the register in form B. These two provisions have been flouted and they have not been complied with by the respondents. A query was made to the learned APP time and again as to whether the interest of State or public at large was likely to be adversely affected by the non-compliance of these two provisions by the respondents. It was not possible for the learned APP to explain that the interest of the State or of the public at large was likely to be affected adversely for non compliance with the said provision. In that view of the matter, simply because there is a non-compliance of a particular provision, it is not necessary that all accused persons committed the said offence should be sent behind the bar. In fact, it is not shown that some minimum punishment has been provided for the aforesaid offence. Had there been a matter of serious nature, then the State would have provided for some minimum punishment. This has not been done which shows that non-compliance is in respect of a technical requirement of law not adversely affecting the interest of Government or the public at large. Moreover, the learned Judge, dealing with the matter has given cogent reasons for not imposing higher punishment to the respondents. The judgment was pronounced in September, 1992. Therefore, nine years have passed. In above view of the matter, I am of the opinion that this is not a case wherein this court should interfere in the quantum of punishment.

4. For the foregoing reasons, I find no substance in the present appeal since there is no case for enhancement of punishment. In above view of the matter, this appeal deserves to be dismissed and it is accordingly dismissed. The impugned judgment and order of the trial court are confirmed.

18.12.2001 [D P Buch, J.]
msp